



DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
BUREAU OF REVENUE SERVICES, INCOME/ESTATE TAX DIVISION

Rule No. 810 (18-125 CMR 810)

**MAINE UNITARY BUSINESS TAXABLE INCOME,
COMBINED REPORTS AND TAX RETURNS**

SUMMARY: The purpose of this rule is to establish standards for determining Maine income tax for unitary businesses and for filing combined reports under 36 M.R.S.A. § 5244 and related tax returns. A combined report is required when an affiliated group of corporations is engaged in a unitary business and at least one member of the group has Maine nexus. The combined report provides the basis for determining taxable income under the laws of the United States and the Maine net income of a unitary business.

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.01 Definitions.

A. Affiliated group. "Affiliated group" means a group of two or more corporations in which more than 50 percent of the voting stock of each member corporation is directly or indirectly owned by a common owner or owners, either corporate or non-corporate, or by one or more of the member corporations. 36 M.R.S.A. § 5102(1-B).

B. Apportionment factor: The apportionment factor is a percentage that is derived from a fraction, the numerator of which is the property factor plus the payroll factor plus twice the sales factor, and the denominator of which is four (4). *See* 36 M.R.S.A. § 5211(8). In the case of an affiliated group of corporations engaged in a unitary business, the factor of the unitary business is the combined factor for all members of the group. In the case of a member of a unitary business group, the numerator of each of the factors is the amount from sources within Maine attributable solely to that member and the denominator is the everywhere amount of all members of the group. *See* Maine Revenue Services Rule 801 (18-125 CMR 801).

C. Assessor. "Assessor" means the State Tax Assessor or designated agent.

D. Bureau. "Bureau" means the Bureau of Revenue Services, also known as Maine Revenue Services.

E. Code. "Code" means the Internal Revenue Code of 1986 with amendments of the United States as of the date specified in 36 M.R.S.A. § 111(1-A).

F. Consistent with federal law or regulations. "Consistent with federal law or regulations" or similar language used in this rule means making a relevant determination in the same manner as under federal law or regulations. For example, "consistent with federal law or regulations" or similar language used in relation to determining net operating losses and the use of losses means determining in the same manner as under federal law or regulations (a) whether a net operating loss deduction is allowed, (b) the amount of deduction, or (c) the timing of the deduction. It does not mean that a net operating loss for a unitary business – its occurrence, amount, or use as a deduction – is based solely on whether the net operating loss or its use as a deduction is included on a federal return filed by member corporations of the unitary business.

G. Nexus. A corporation has nexus with Maine when it has sufficient presence in Maine to allow apportionment of taxable income to Maine. *See* Maine Revenue Services Rule 808 (18-125 CMR 808).

H. Unitary business. "Unitary business" means a business activity that is characterized by unity of ownership, functional integration, centralization of management and economies of scale. 36 M.R.S.A. § 5102(10-A).

.02 Combined Report. A taxable corporation that is a member of an affiliated group and that is engaged in a unitary business with one or more other members of that affiliated group must file a combined report. 36 M.R.S.A. § 5220(5). Maine employs a "water's edge" combined reporting methodology. Therefore, all unitary members of the affiliated group, except those members not required to file a federal return, must be listed on the combined report. The combined report must indicate whether each corporation has nexus with Maine. The combined report must also include, both in the aggregate and by corporation: the federal taxable income, state modifications provided by 36 M.R.S.A. § 5200-A, sales, payroll, and property in Maine and everywhere, and the Maine net income of the unitary business. *See* 36 M.R.S.A. § 5244. The corporations listed that are unitary members of the affiliated group and that have nexus with Maine must file a Maine corporate income tax return or returns as provided in Section .06 below. *See* 36 M.R.S.A. § 5220(5).

.03 Taxable Income under the laws of the United States. The taxable income under the laws of the United States, *see* 36 M.R.S.A. § 5102(8), of the unitary business is determined in the following manner.

A. The separate federal taxable income as defined under federal consolidated regulations for each member of the unitary business group that is a member of a single federal consolidated filing must be adjusted for eliminations, deferrals, and other modifications allowed under the federal law and regulations. In the event that the eliminations, deferrals, and other modifications are based on

intercompany transactions, such adjustments must be made only for transactions between corporations included in the combined report. If a unitary group member did not receive the full benefit of an allowable tax benefit (such as a charitable contribution deduction) in the federal consolidated return because of the effect of income of non-unitary members in the consolidated return, the unitary member may take the adjustment which would have been allowed under federal law if only the unitary members had filed the consolidated return.

B. The federal taxable income (before special deductions and net operating loss deductions) from the federal returns of unitary group members that are not members of a federal consolidated group must be added to the income amounts obtained pursuant to sub-section (A) above.

C. The taxable income referenced in sub-sections (A) and (B) above includes, for a corporation with an interest in a flow-through entity (e.g., partnership, LLC, S corporation), its distributive share of the entity income, loss, or deduction in accordance with the Code and 36 M.R.S.A. § 5102(8). The character of any item included in the distributive share is determined as if it were realized or incurred directly by the corporation. The business of the flow-through entity is treated as the business of the corporation. *See* Maine Revenue Services Rule 801 (18-125 CMR 801), Section .09.

D. The income computed in accordance with sub-sections (A) and (B) above must be adjusted by certain intercompany transactions that result in gains/losses between corporate members of the unitary business group that have not already been used to adjust income under sub-section (A). Adjustments made under this sub-section include, but are not limited to, those for (a) dividends paid out of income subject to apportionment under 36 M.R.S.A., chapter 821 by one unitary member to another unitary member; (b) deferrals of gains/losses from intercompany sales of inventory; and (c) deferrals of gains/losses from intercompany sales of fixed assets. These intercompany transactions are deferred or eliminated for the purpose of reflecting the income of the unitary business as a separate economic unit, similar to the purpose that underlies the federal consolidated filing regulations. Intercompany transactions must therefore be treated in a manner consistent with federal law and regulations.

E. The amount calculated by adjusting the aggregate income computed under sub-sections (A) and (B) in accordance with sub-section (D) constitutes the taxable income of the unitary business under the laws of the United States before special deductions (Code §§ 241 *et seq.*) and net operating loss deductions (Code § 172).

F. The amount of the special deductions for the members of the unitary business must be aggregated and adjusted if necessary in a manner consistent with the federal consolidated filing regulations.

G. The federal taxable income computed in accordance with sub-section (E) above must be combined with the special deductions computed in accordance with sub-section (F) above. If the result of this computation is positive, available net operating loss deductions for members of the unitary business group may be

applied against the income of the unitary business. If the result of the computation is negative, it constitutes a net operating loss for the unitary business and may be treated as the basis for a net operating loss deduction that may be carried back or forward consistent with the Code and related regulations and with the requirements of section .09 below.

.04 Maine Net Income. The Maine net income of a unitary business, and of individual members of a unitary business, is determined in the following manner.

A. Unitary business. The taxable income under the laws of the United States of the unitary business (as determined pursuant to section .03(G) above) is adjusted by the Maine modifications under 36 M.R.S.A. § 5200-A to compute the adjusted federal taxable income for the unitary business. The Maine net income of the unitary business is then determined by multiplying the adjusted federal taxable by the apportionment factor.

B. Individual member of a unitary business group. The Maine net income of a taxable corporation that is a member of a unitary business group is determined by multiplying the adjusted federal taxable income of the unitary business by that corporation's individual apportionment factor.

.05 Differing Year-End Dates.

If the taxable years of the members of the unitary business group differ, the filing member's (see section .06(A) below) taxable year must be used to determine the Maine net income of the unitary business.

If the precise amount of a unitary member's income can be readily determined from the books for the months involved in the filing member's taxable year, those actual amounts are to be used. In the absence of a precise determination, the income of a unitary member must be converted to conform to the taxable year of the filing member on the basis of the number of months falling within the applicable taxable year. For example, if the filing member operates on a calendar year and a unitary member includible in a combined report operates on a fiscal year ending on April 30, it is necessary to assign 8/12 of that member's income from the current taxable year and 4/12 of the income from the preceding taxable year in order to arrive at a full twelve months' income to be included in the combined report. This method may be used only if the return can be timely filed after the member's taxable year ends. As an alternative, the unitary business may include in its taxable income all of the taxable income of a group member whose taxable year ends within the taxable year of the unitary business. Once one of these methods is used for a group member, that member must continue to use that method for succeeding years for as long as the corporation remains a member of the unitary business group.

After the combined taxable income of the unitary business is determined on the basis of the filing member's taxable year, the apportionment factor must be computed on the basis of the same taxable year.

.06 Unitary Business Returns.

A. Single Return. Taxable corporations that are members of an affiliated group and that are engaged in a unitary business may file a single return on which the

aggregate Maine income tax liability of all those corporations is reported. *See* 36 M.R.S.A. §5220(5). The income of the unitary business is the income described in sections .04(A) above. All members of the unitary business with Maine nexus must be included in the single return.

The single return must be filed in the name and federal employer identification number of the parent corporation if the parent is a member of the unitary business group and has nexus with Maine. If there is no parent corporation, if the parent is not a unitary group member, or if the parent does not have nexus with Maine, the members of the unitary business must choose a Maine taxpayer member to file the return. Once this filing member has been selected, it must remain the same in subsequent years unless an ownership change occurs or the filing member no longer has nexus with Maine. The return must be signed by a responsible officer of the filing member as the agent of all unitary business members subject to Maine tax. The Maine combined report of the unitary business must be attached to the Maine corporate income tax return.

B. Separate Returns. If the single return option is not chosen, each unitary member that has nexus with Maine must file a separate income tax return based on the combined report. Each of the separate returns will list the combined federal taxable income and the combined state modifications of the unitary business to compute the combined apportionable adjusted federal taxable income of the unitary business. The apportionment factor is then used to compute the Maine net income of that member. The numerator of each of the factors (property, payroll, and sales) is the amount from sources within Maine attributable solely to that separate member. The denominator of each of the factors is the amount from everywhere of the unitary business. A copy of the combined report must be attached to each of the separate returns.

.07 Computation of Tax. If separate returns are filed, the respective preferential rates provided in 36 M.R.S.A. § 5200 are applied only to the first \$250,000 of Maine net income of the entire group and must be apportioned equally among the taxable corporations unless they jointly elect a different apportionment. The balance of the Maine net income of the entire group must be taxed at the highest marginal tax rate. In all cases, a schedule showing the income assignment to each member corporation and computation of the income tax must be submitted with each return.

.08 Credits. A tax credit generated by a taxable corporation that is a member of an affiliated group engaged in a unitary business may be applied only against the Maine income tax liability of that corporation, and not against the Maine income tax of other members of the unitary business, unless otherwise specifically permitted by law.

.09 Allocation and Use of Combined Net Operating Losses. The allocation and/or use of losses is necessary for purposes of determining the availability of net operating loss deductions to the unitary business in the event that a member leaves the unitary business and/or a new member enters a unitary business. Net operating losses and the use of net operating losses must be allocated to each member of the unitary business that individually sustains a loss or utilizes a net operating loss. The allocation and use of the net operating losses must be done in a manner consistent with federal law and regulations.

In a year in which the unitary business as a whole experiences a loss as determined in section

.03(G) above, the loss amount, and the use of the loss amount, allocated to individual members of the unitary business is determined as follows:

(A) Allocation of losses. The loss allocated to those members that sustained a loss under the calculations performed under section .03(G) above, is determined on the basis of each loss member's proportional contribution to the loss. The proportional factor is applied against the total net loss of the unitary business as a whole to determine the amount allocated to each member that experienced the loss.

(B) Allocation of use of losses. Net operating losses that make up the net operating loss deduction must be applied in chronological order. Eligible losses arising in taxable years ending on the same day and that are deductible without limitation in the taxable year are applied on a pro rata basis.

.10 Carry in and Carry out of Net Operating Loss Deductions. When a unitary business member with an allocated net operating loss carryover leaves the unitary business, the allocated net operating loss amount remaining follows the former member and is no longer available for use by the unitary business. The former member may use the net operating loss carryover when filing a separate Maine income tax return if the member does not become a member of another unitary business. If the former member becomes a member of another Maine unitary business, the member may use the net operating loss in a manner consistent with the Code and related regulations and with the requirements of this Rule.

.11 Application Date. Generally, this rule applies to income tax returns for any tax year, including amended returns, filed after the effective date of the rule. Section .05, "Differing Year-End Dates," and the language in Section .06 relating to filing member and responsible officer applies to returns for tax years beginning on or after the effective date of the rule.

AUTHORITY: 36 M.R.S.A. § 112.

EFFECTIVE DATE: September 3, 2001